

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

Supplemental Filing of Verizon	)	
New Jersey Regarding the	)	
Application by Verizon New Jersey Inc.,	)	
Bell Atlantic Communications, Inc.	)	
(d/b/a Verizon Long Distance),	)	
NYNEX Long Distance Company	)	
(d/b/a Verizon Enterprise Solutions),	)	CC Docket No. 02-67
Verizon Global Networks Inc., and	)	
Verizon Select Services Inc., for	)	
Authorization To Provide In-Region,	)	
InterLATA Services in New Jersey	)	

**COMMENTS OF XO COMMUNICATIONS, INC.**

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## SUMMARY

XO Communications, Inc. (“XO”) opposes Verizon’s re-submitted application for authority to provide in-region, interLATA services in New Jersey. XO incorporates by reference its previous filing concerning Verizon’s initial application for 271 authority for the State of New Jersey. XO submits that even with Verizon’s *Supplemental Filing*, the issues raised by XO and other interested parties in response to Verizon’s initial 271 application remain relevant to the Commission’s consideration of the *Supplemental Filing*.

Verizon’s *Supplemental Filing* does not provide for a permanent solution concerning the non-recurring charges for hot cuts in New Jersey. As Verizon emphasized throughout the *Supplemental Filing*, the non-recurring charges for hot cuts have not been changed by the *Supplemental Filing*. Instead, Verizon has agreed to credit non-recurring charges that exceed \$35.00 in some cases. Further, the term of the credit is different than the term contained in the New York Incentive Plan. Under the New York Incentive Plan, the credit for non-recurring hot cut charges will remain in place until March 1, 2004. In New Jersey, the credit will remain in place until the earlier of a ruling by the New Jersey Board of Public Utilities (“NJ BPU”) on AT&T’s petition for reconsideration of the *NJ UNE Order* or March 1, 2004. Thus, the term of the credit in New Jersey may be significantly shorter than the term of the New York credit.

Verizon’s proposed solution for New Jersey is inadequate for other reasons as well. The New York Incentive Plan proposed a limited term for the non-recurring hot cut charge credit so that the industry could develop a hot cut process that would ultimately result in a permanent reduction in the non-recurring charge for hot cuts. In New Jersey,

there is no equivalent process in place that will resolve the anti-competitive effects associated with the exorbitant non-recurring charge for hot cuts. Additionally, the New York Incentive Plan addressed many other issues aside from the non-recurring charge for hot cuts. CLECs entered into the New York settlement because of the totality of the issues it addresses and not simply because it allowed for a temporary reduction in the non-recurring charge for hot cuts.

The Commission must still consider the issue of whether Verizon's non-recurring charge for hot cuts results in a price squeeze. Since Verizon has not modified the non-recurring charge for hot cuts and the existing charge could become the permanent charge, the *Supplemental Filing* has not solved the price squeeze issue. In determining whether the non-recurring rate for hot cut charges is reasonable, the Commission must take into consideration the fact that Verizon was able to reduce the charge by 660% in the space of one week.

Aside from the hot cut issue is the larger question of whether Verizon will appeal the *NJ UNE Order*. As the Commission is aware, the NJ BPU conditioned its support of Verizon's 271 application on Verizon using the rates for unbundled network elements contained in the *NJ UNE Order*. Until the deadline for appeal has passed, the NJ BPU does not support Verizon's application. Further, the procedural schedule adopted by the Commission for consideration of the *Supplemental Filing*, closes the comment period prior to the deadline for Verizon's appeal of the *NJ UNE Order*. At the very least, the Commission should allow interested parties to file additional comments should Verizon appeal the *NJ UNE Order* resulting in the loss of the NJ BPU's support of its application. However, XO submits that a better solution would be for the Commission to reject the

*Supplemental Filing* and require Verizon to re-file after the deadline for appeal has passed.

Other problems persist in the New Jersey local exchange telecommunications marketplace. The Access New Jersey Program continues to discriminate against competitive carriers in New Jersey. XO first raised the issue in its initial comments. Since that time, Verizon has attempted to dismiss significant anti-competitive issues associated with the program. Until New Jersey adopts a universal service fund and eliminates the Access New Jersey Program, CLECs are locked out of an important market segment.

All of the issues raised by XO in its comments filed in response to Verizon's initial 271 application remain relevant and XO incorporates those comments by reference. Verizon still has much work to do in opening up the New Jersey local exchange market to competition. Until Verizon has resolved all the issues in these comments as well as in XO's initial comments, the Commission should deny Verizon's 271 application for the State of New Jersey.

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Authorization To Provide In-Region,	)	
InterLATA Services in New Jersey	)	

**COMMENTS OF XO COMMUNICATIONS, INC.**

XO Communications, Inc.,<sup>1</sup> through undersigned counsel, (“XO”) submits these comments in response to Verizon New Jersey’s re-submitted application for authority to provide in-region, interLATA services in New Jersey.<sup>2</sup> Pursuant to the Commission’s request, XO incorporates by reference its previous filing concerning Verizon’s initial application for 271 authority for the State of New Jersey.<sup>3</sup> Even taking into account Verizon’s *Supplemental Filing*, the issues raised by XO in its initial comments continue to raise valid impediments to the provision of competitive local exchange telecommunications services in the State of New Jersey that disqualify Verizon from

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<sup>1</sup> XO Communications, Inc. is the parent of XO New Jersey, Inc. which is a New Jersey certificated Competitive Local Exchange Carrier. Throughout these comments, references to “XO” collectively refer to XO Communications, Inc. as well as XO New Jersey, Inc.

<sup>2</sup> See *Supplemental Filing of Verizon New Jersey*, CC Docket No. 02-67 (filed Mar. 26, 2002) (“*Supplemental Filing*”).

<sup>3</sup> See Comments of XO Communications, Inc., CC Docket No. 01-347 (filed Jan. 14, 2002).

receiving Section 271 authority for that state. Contrary to Verizon's claim in its *Supplemental Filing* that "the record amassed on Verizon's original application makes clear that there is no serious dispute that Verizon has satisfied all non-pricing aspects of the checklist,"<sup>4</sup> the majority of the issues raised by XO and other CLECs clearly disputes Verizon's claim and demonstrates its failure to meet various aspects of the competitive checklist and the public interest.

**I. VERIZON HAS PROVIDED ONLY A TEMPORARY CREDIT FOR NON-RECURRING HOT CUTS CHARGES**

Contrary to its filing with the NJ BPU, Verizon's *Supplemental Filing* makes clear that it is not modifying the charge of the non-recurring charge for a hot cut. Rather, Verizon is providing CLECs operating in New Jersey with a credit in the same manner Verizon provides to CLECs operating in New York.<sup>5</sup> As described by Verizon in its *Supplemental Filing*, in New York Verizon agreed to credit hot-cut payments over \$35.00 back to the CLEC for a two-year period to result in a net hot cut rate of \$35.00. Verizon adds "[s]ignificantly, the agreement makes clear that the \$185.19 rate still represents 'the cost-based rates established in the [New York] Commission's UNE Rate Order for [hot-cut] procedures.'"<sup>6</sup> Verizon has not agreed to reduce its non-recurring charge for hot cuts in New York or in New Jersey. Rather, Verizon has stated that it will provide CLECs operating in New Jersey "with the same credit it agreed to provide CLECs in New

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<sup>4</sup> *Supplemental Filing*, at p. 3.

<sup>5</sup> *Supplemental Filing*, at p. 16.

<sup>6</sup> *Supplemental Filing*, at p. 16.

York.”<sup>7</sup> Thus, Verizon has not reduced the charge for a hot cut, rather it is providing CLECs with a temporary credit for the cost of a hot cut that exceeds \$35.00. Furthermore, in its notice to the NJ BPU, Verizon made clear that the price for some hot cuts will exceed \$35.00. Verizon stated “effective with the filing of this letter, implementing a change to its Non-Recurring Rate sheets, reflecting a reduced charge of \$35.00 to be applied to all *non-expedited orders*, initial or additional . . . Additional charges will continue to apply beyond the \$35.00 rate for orders on which CLECs request expedited treatment or manual order handling, or for which a premise visit is required.”<sup>8</sup> Thus, the \$35.00 credit applies to particular types of hot cuts and not hot cuts generally. Further, Verizon’s filing with the NJ BPU consisted of a two page letter that does not expressly explain the credit mechanism. It appears from this letter filed with the NJ BPU that Verizon has modified the cost of the non-recurring charge for a hot cut in New Jersey. This stands in stark contrast to the exhaustive explanation Verizon filed with the Commission explaining that the non-recurring cost for a hot cut charge has been modified only by the temporary credit. Since Verizon’s letter to the NJ BPU lacks the detail of the filing made with the Commission, the Commission should confirm that the NJ BPU is aware that Verizon has not modified the non-recurring cost for a hot cut in New Jersey.

Aside from the fact that Verizon has not agreed to a reduction in the charge for a hot cut, Verizon’s proposal for importing only the non-recurring hot cut credit from the New York Incentive Plan is not, by itself, an adequate solution to the cost of hot cuts in New Jersey. The New York Incentive Plan calls for credit for all non-recurring hot cut

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<sup>7</sup> *Supplemental Filing*, at p. 16.

<sup>8</sup> *See* Letter from Bruce D. Cohen, Verizon, to Kristi Izzo, New Jersey Board of Pub. Utils. (dated March 20, 2002) at p. 1.

charges exceeding \$35.00 until March 1, 2004.<sup>9</sup> Verizon has not agreed to the same term in New Jersey. Verizon will only commit to keeping the credit in place until the earlier of March 1, 2004 or when the NJ BPU completes its review of AT&T's pending request for reconsideration of the NJ BPU's pricing decision. Thus, the term of the credit in New Jersey may be much shorter than the term of the New York credit. Also, the New York Commission has directed the industry to fashion a process for hot cuts that significantly reduces the non-recurring charge. The New York Incentive Plan is meant to provide immediate relief from a non-recurring hot cut charge that stifles competition while the industry develops a process that results in a non-recurring charge that fosters competition.<sup>10</sup> In New Jersey, there is no industry group working to devise a hot cut process that will permanently reduce the non-recurring charge for a hot cut. AT&T's pending request for reconsideration is not equivalent to the industry process already underway in New York that promises to significantly and permanently reduce the non-recurring charge for a hot cut. Accordingly, Verizon's agreement to solely implement the hot cut credit portion of the New York Incentive Plan does not provide a permanent solution to the hot cut problem in New Jersey.

As set out in XO's comments filed in response to Verizon's initial filing for in-region interLATA services, the price for hot cuts recently set by the NJ BPU will not

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<sup>9</sup> See Joint Proposal Concerning Verizon Incentive Plan, at 1.

<sup>10</sup> Although CLECs, including XO, participated in the New York settlement, the settlement should not be construed to mean that CLECs agree that the proper non-recurring cost for a hot cut is \$35.00. CLECs agreed to the full settlement that had many other components addressing a variety of issues of which the non-recurring cost of a hot cut was one small component. The totality of the New York settlement, including the continuing process to permanently reduce the cost of a hot cut, provided many other benefits that led CLECs to accept a temporary credit mechanism in regard to the non-recurring charge for hot cuts.

permit meaningful competition.<sup>11</sup> As Verizon painstakingly emphasizes in its *Supplemental Filing*, the non-recurring charge for hot cuts in New Jersey remains \$159.76 (without a premise visit) and \$233.12 (with a premise visit). At these levels, the New Jersey non-recurring charge for hot cuts exceeds those charged by Verizon in Virginia, Maryland, Pennsylvania, Delaware and Massachusetts by 117 percent to over 3000 percent.<sup>12</sup> In addition to potentially allowing Verizon to offer a temporary credit for the sole purpose of obtaining authority to provide in-region interLATA telecommunications services, the Commission must still consider whether the non-recurring rates for hot cuts in New Jersey *without the credit* will allow competition to develop in the New Jersey market. Even though the full non-recurring charge for hot cuts is not currently effective, the Commission must still consider whether there is a “price squeeze” if Verizon reverts back to those rates. Absent such a determination, the Commission cannot find that Verizon has irreversibly opened its markets to competition.<sup>13</sup> In considering whether a non-recurring rate for a hot cut of \$159.76 (without a premise visit) and \$233.12 (with a premise visit) is too much, the Commission should take into consideration the fact that Verizon reduced the rate by more than 660% in one week’s time.

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<sup>11</sup> See XO Comments, at p. 18.

<sup>12</sup> See AT&T Comments, Szczepanski Declaration, Tables 1-2.

<sup>13</sup> While Verizon’s *Supplemental Filing* provides for a temporary credit for non-recurring hot charges that exceed \$35.00, the same charges for hot cuts may become effective in the near future if any of the conditions in Verizon’s March 20 letter occur. Thus, the Commission must consider the price squeeze argument and other issues relating to the non-recurring charge for hot cuts in New Jersey.

## **II. THE COMMISSION SHOULD REQUIRE VERIZON TO REFILE ITS 271 APPLICATION AFTER THE DEADLINE FOR APPEAL OF THE NEW JERSEY UNE RATE ORDER HAS PASSED**

Apart from the hot cut issue is the larger question of whether Verizon will appeal the NJ BPU's order concerning the rates and terms for unbundled network elements in New Jersey.<sup>14</sup> Verizon has until April 22, 2002 to appeal the *NJ UNE Order*. The NJ BPU conditioned its support of Verizon's 271 application on Verizon using the rates for unbundled network elements set out in the *NJ UNE Order*.<sup>15</sup> Until the deadline for appeal has passed, the NJ BPU does not support Verizon's application for authority to provide in-region interLATA services in the State of New Jersey. Further, the Commission's procedural schedule closes the comment period on April 19, 2002. Therefore, competitive carriers will be denied the opportunity to provide meaningful comment if Verizon appeals the *NJ UNE Order*. *At the very least*, the Commission should allow parties to submit additional comments if Verizon appeals the *NJ UNE Order* and loses the support of the NJ BPU as a result. XO submits that the Commission should at this time reject Verizon's 271 application and require Verizon to re-file after the deadline for appeal has passed so that interested parties can make meaningful comment on the totality of the competitive local exchange market for the State of New Jersey.

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<sup>14</sup> See *Review of Unbundled Network Elements Rates, Terms and Conditions of Bell Atlantic-New Jersey, Inc.*, Decision and Order, Docket No. TO00060356 (NJ BPU rel. Mar. 6, 2002) ("*NJ UNE Order*").

<sup>15</sup> See Letter from Henry O. Ogden, NJ BPU, to Bruce D. Cohen, Verizon New Jersey, Inc. (dated Jan. 9, 2002).

### **III. THE ACCESS NEW JERSEY PROGRAM CONTINUES TO IMPEDE COMPETITION IN AN IMPORTANT MARKET SEGMENT**

In its initial comments, XO raised the issue of the anti-competitive results associated with the Access New Jersey Program.<sup>16</sup> As explained in XO's initial comments, the Access New Jersey Program allows Verizon to offer telecommunications services to educational institutions up to a 72% discounted rate.<sup>17</sup> The establishment of a universal service fund and the elimination of the Access New Jersey Program are inextricably intertwined. The establishment of a state universal service fund instead of the Access New Jersey Program would still allow the important policy goals of the Access New Jersey Program to be realized without providing an insurmountable cost advantage to Verizon and even improve the choices available to the state's schools and libraries. While it is true that XO supports the establishment of a state universal service fund, it is equally important for the Access New Jersey Program to be eliminated because it discriminates in favor of Verizon and disadvantages facilities-based CLECs in an important market sector.

Verizon attempted to dismiss the anti-competitive issues associated with the Access New Jersey Program in an *ex parte* letter filed with the Commission by stating that carriers can resell the services.<sup>18</sup> However, the availability of resale does not meet the public interest standard for granting 271 applications because resale does not permit facilities-based entry. Further, Verizon should not be able to dictate the terms of entry for any segment of that market. Verizon also tried to dismiss the issue by stating that the

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<sup>16</sup> See XO Comments, at 24-26.

<sup>17</sup> See XO Comments, at 24-25.

<sup>18</sup> See Letter from Clint E. Odom, Verizon Communications, to William Caton, Acting Secretary, Federal Communications Commission (dated Feb. 19, 2002).

New Jersey Board has a proceeding underway to address the future of the Access New Jersey Program.<sup>19</sup> XO submits that the existence of a proceeding to determine the future of a program that so clearly discriminates in favor of Verizon is not an adequate solution. The NJ BPU's Consultative Report simply mentions that XO supports the Ratepayer Advocate's call for the establishment of a state universal service fund.<sup>20</sup> Therefore, there is nothing in the record at the state level to refute XO's concerns. Accordingly, the Commission must reject Verizon's application because the discriminatory effects of the Access New Jersey Program are in conflict with the public interest standard of Section 271.

#### **IV. OTHER ISSUES PREVIOUSLY RAISED BY XO REMAIN VALID**

Pursuant to the Commission's request, XO incorporates by reference the comments it filed in response to Verizon's previously filed application for 271 authority for New Jersey. All of the issues raised by XO remain relevant to Verizon supplemental filing. Thus, as explained in those comments, Verizon has not met its reciprocal compensation obligations as set out in interconnection agreements approved by the New Jersey Board of Public Utilities ("NJ BPU") and this situation has not changed in the week that passed between Verizon's withdrawal of its then pending New Jersey 271 application and the *Supplemental Filing*. Further, Verizon continues to discriminate in its provision of access to directory listings. Verizon also continues to operate under "*force majeure*" in New Jersey due to the September 11, 2001 terrorist attacks on New York City and Washington, D.C. and, thus, has the potential to deny any obligation to comply

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<sup>19</sup> See *id.*

<sup>20</sup> See *Consultative Report of the New Jersey Board of Public Utilities*, CC Docket No. 01-347 (filed Jan. 14, 2002) ("*Consultative Report*").

with checklist requirements.<sup>21</sup> Until Verizon is capable of complying with all of the checklist requirements, the Commission should not grant it authority to provide in-region, interLATA telecommunications services. In addition, the lack of a state universal service fund and the existence of the Access New Jersey Program continue to provide Verizon with unfair pricing advantages that are not available to competitive carriers. Until a state universal service fund is created and the Access New Jersey Program is eliminated, the Commission should not grant Verizon's 271 application. Verizon has also constructed artificial barriers for CLEC-to-CLEC migrations that continue to negatively impact competition in the New Jersey local exchange telecommunications marketplace. XO includes by reference its previously filed comments on these and all other issues raised in its previously submitted comments.

Verizon's *Supplemental Filing* only addresses the non-recurring hot cut rates for the State of New Jersey. The *Supplemental Filing* does not address any of the other issues raised by XO or other commenters. Accordingly, Verizon has not demonstrated compliance with standards for authority to provide interLATA services in New Jersey. Until all of the issues are resolved concerning the non-recurring rate for hot cuts, as well as the equally important issues raised by XO and other CLECs in response to Verizon initial application for 271 authority in the State of New Jersey, the Commission must reject Verizon's present application for 271 authority.

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<sup>21</sup> The NJ BPU did not address this critical issue in its *Consultative Report* depriving the Commission of a record at the state level on this critical issue.

**V. CONCLUSION**

For the foregoing reasons, XO urges the Commission to deny Verizon's Supplemental Filing concerning its initial Application for Provision of In-Region InterLATA Services in the State of New Jersey.

Respectfully submitted,

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